Municipal Bylaw Guide

Saskatchewan Municipal Affairs, Culture and Housing
Advisory (Management) Services
August 2000

102-04235/

Table of Contents

Definition _____ 1

Authority to Pass Bylaw _____ 1

Specific Authority Necessary _____ 1

Bylaw or Resolution? _____ 2

Points to Consider _____ 2

Components of a Bylaw _____ 3

Adoption Procedures _____ 6

Readings _____ 7

Assent or Approval _____ 8

Amending or Repealing _____ 9

Retention of Bylaws _____ 10

Enforcement _____ 10

Severability _____ 10

Quashing _____ 11

Further Information _____ 12

Bylaw Checklist _____ Appendix A

Sample Bylaw _____ Appendix B

Definition

"Bylaw" – a law of the municipality passed by the municipal council.

Authority to Pass Bylaw

Under the Canadian Constitution, the provinces have the authority to create municipalities and to delegate to them certain law-making powers.

Laws which municipalities are permitted to pass are called bylaws.

Municipalities may take only such action as is authorized by the provincial legislature through provincial Acts (statutes). If there is no statutory authority for a certain action, a municipality may not legally pass a bylaw to take such action.

When statutory authority does not support a bylaw, expressed or implied, it is **ultra vires** (beyond the power of the municipality). If such a bylaw is challenged, the courts will strike it down. If such a bylaw requires the approval of a provincial department or agency, it will not be approved and, therefore, it will have neither force nor effect.

Where provisions in a local bylaw conflict with a provincial Act, the provincial statutory provision normally takes precedence.

The authority to pass bylaws is limited in some cases by requiring the approval of a provincial government department or agency. In other cases, the authority is limited by the fact that some bylaws must be advertised or published before taking effect.

The authority of council to pass bylaws may be further controlled or limited. In urban municipalities, electors may require the council to submit a bylaw to a vote of the electors. When a bylaw is put to a vote in this fashion, the results of the vote are binding. A bylaw passed under these circumstances can only be amended or repealed by following very specific procedures.

Also, the Saskatchewan Municipal Board, *The Urban Municipality Act, 1984* (the Urban Act), *The Rural Municipality Act, 1989* (the Rural Act) or other statutes sometimes require that council submit a bylaw to a vote of the electors. When approved by the electors, it is binding on council.

Specific Authority Necessary

The specific authority to pass a bylaw must be found in the Rural Act, the Urban Act or another Act (e.g. *The Planning and Development Act, 1983*).

If no specific provision exists in legislation, the desired action is likely beyond the power of council.

The "general power to pass bylaws", given in the Urban Act and the Rural Act, appears to give council broad powers to take virtually any action in keeping with common sense. Such all-encompassing powers can be deceptive.

The courts usually give a narrow interpretation of municipal powers. They take the view that if the legislature had intended municipalities to exercise power in a particular area, they would have provided for it. Provincial and federal levels of government have passed many laws dealing with public order, health, safety, and so on. These provincial and federal rules (e.g. *The Criminal Code*) would take precedence over any local bylaws.

Bylaw or Resolution?

The formalities leading to the passing of a resolution are less restrictive than those for the passing of a bylaw.

The powers of council are exercised by bylaw in more important matters, particularly those affecting the public or a section of the public. Resolutions usually deal with matters of a minor, administrative nature such as adjourning a meeting or appointing an auditor. Often the Act (statute) which grants the municipality specific authority will state whether this power is to be exercised by bylaw or resolution.

Legislation states when a bylaw shall be used. However, if the Act does not state whether a bylaw or resolution is required, the general "rule of thumb" is to use a bylaw. For important, ongoing matters that have general application, or where a penalty is involved (e.g. licensing), a bylaw should be used. When in doubt, consult a solicitor.

Points to Consider

Obtain sample bylaws from Municipal Affairs, Culture and Housing (MACH) and various other departments, if they are available;

Discuss with experienced Clerks/Administrators of other municipalities and obtain copies of their bylaws;

Consult a solicitor if the bylaw is complex or if you are uncertain of its validity;

If the bylaw is long, break it up into numbered sections and use headings;

Try to stick to terms, phrases and wording used in the statute or in the definition section of the bylaw;

Avoid legal jargon and words other than from the English language;

Use "shall" to show that a certain action must or must not be done;

Use "may" to show an action that is permissive;

Use only those clauses that are necessary (e.g. if no penalty is required, do not use a penalty clause);

Schedules and forms should be designated with numbers and letters (e.g. "Schedule 1" or "Form A");

Distribute copies of the draft bylaw to all members of council.

Components of a Bylaw

Corporate Name

This is the full name of the municipality.

Examples:
"Rural Municipality of _____ No._____."
"Village of _____."

Bylaw Number

The bylaw number should include the number of the bylaw and the year it was passed. Bylaws should be numbered consecutively.

Example:
"Bylaw No.4/2000" means the fourth bylaw passed in 2000.

Bylaw Title

The bylaw title states the purpose of the bylaw.

Example:
"A Bylaw to Establish a Recreation Board."

Enacting Clause

This clause states that the council is the body that enacts the bylaw.

Example:
"The council of the Town of _____, in the Province of Saskatchewan, enacts as follows:"

Interpretation Clause

This clause contains a statement of the meaning of a word or a group of words.

Example:
"**land** - does not include improvements".

When using an interpretation clause in your bylaw, ensure uniformity by listing definitions that are identical to what is in the enabling Act.

Operative Clause(s)

The operative clause or clauses state what the bylaw is intending to do and how it is to be done.

Examples:
"1. A Recreation Board for the Rural Municipality of _____ No.__ is hereby established.
2. The Recreation Board is to be named the _____ Recreation Board.
3. The _____ Recreation Board shall consist of six (6) members appointed by resolution of the council of the Rural Municipality of _____ No.__."

Schedule Clause

The schedule clause identifies or refers to an attached schedule such as a schedule of water rates, licence fees, etc.

Example:
"The water rates shall be set out in Schedule 1, attached to and forming a part of this bylaw."

Attachment would read:
"Schedule 1 to Bylaw No.___/___."

Form Clause

The form clause refers to an attached form.

Example:
"The Notice of Violation shall be in Form A, attached to and forming part of this bylaw."

Attachment would read:
"Form A to Bylaw No.____/_____."

Penalty Clause

Do not exceed the authority in the Act in setting penalties. If the penalty to be set is the penalty stated in the municipality's general penalty bylaw, reference must be made to that bylaw.

Note: The municipal Acts, and most other statutes, do not provide council with authority to set **minimum** fines or penalties, only **maximums**.

Example:
"The penalty for an infraction against Section 4 of this bylaw shall be $100. (one hundred dollars)."

Repeal Clause

If a new bylaw replaces an outdated one, the old bylaw must be repealed by inserting a repeal clause in the new bylaw.

Example:
"Bylaw No.21/52, passed March 15, 1952, being a bylaw to license dogs, is hereby repealed."

If bylaws are no longer being used, it is best to officially cancel them by passing a separate repealing bylaw.

Repealed bylaws should be removed from the active bylaw register and placed in a separate file or register.

Effective Date Clause

No effective date clause is needed if the bylaw is to take effect immediately; it becomes effective when it has received third reading. Council may, however, wish to have the bylaw come into effect later or the Act may require provincial approval for the bylaw before it takes effect. In these cases, the clause should state the intended effective date.

Note: No authority exists for bylaws to be passed retroactively.

Example:
"This bylaw shall come into force and take effect on September ___, _____."
or
"This bylaw shall come into force and take effect when approved by the Minister of _____."
or
"This bylaw shall come into force and take effect when approved by the Saskatchewan Municipal Board."

Signing and Sealing

After third reading, the Clerk/Administrator and the person who presided at the council meeting when the bylaw was adopted must sign the bylaw.

The Clerk/Administrator at this time should affix the seal to the bylaw.

Example:
"

_____
Clerk/Administrator

{SEAL} _____
Mayor/Reeve/Presiding Officer"

Dating the Bylaw

Although there is no requirement that the bylaw be dated, the date of third reading and adoption should be shown on the bylaw under the seal and signatures.

Example:
"Read a third time and adopted this ____ day of _____, ____."

Adoption Procedures

The procedure to adopt a bylaw generally will involve the following steps:

(a) Preparation of a draft bylaw by the Clerk/Administrator at the direction of council;

(b) First reading of the bylaw is moved, seconded, discussed and a vote is taken;

Note: No seconder is required except in towns and cities. Towns and cities may remove this requirement by procedure bylaw.

(c) Second reading of the bylaw is moved, seconded, discussed and again a vote is taken;

(d) Amendments after second reading are proposed by resolution which, if seconded and carried, become part of the proposed bylaw;

(e) If all three readings are to be given at the same meeting, a resolution must be introduced to allow three readings at that meeting. **This resolution must be passed unanimously**;

(f) Third reading of the bylaw is moved, seconded, discussed and voted upon. If the vote is carried, the bylaw is considered passed and adopted;

Note: If any of the resolutions authorizing first, second or third readings are not carried, the bylaw does not proceed beyond that point. If council wishes to reintroduce the bylaw, the entire adoption procedure must start over.

(g) Signing and sealing of the bylaw should take place immediately or very soon after the adoption of the bylaw.

Readings

The Urban Act and the Rural Act have provisions that state:

"(Every proposed bylaw is required to receive three distinct and separate readings and third reading constitutes adoption of the bylaw. No more than two readings of a proposed bylaw may be had at any one meeting of the council, except by the unanimous vote of the members of council present at the meeting.)"

A "reading" of a bylaw has come to mean "a stage of consideration". Therefore, the bylaw does not necessarily need to be read aloud at the meeting. It is best to circulate copies of the proposed bylaw at or before the council meeting. After each reading, the bylaw is discussed and a vote is taken.

Usually, a bylaw is given two readings at one meeting and the third reading at the next meeting.

Council members may wish to give a proposed bylaw all three readings at one meeting. To do so, they must **unanimously** pass a resolution agreeing to give the bylaw three readings at that meeting.

Example:

"*First Reading*	Krawchuk/Smith: 1/2000	That Bylaw No.____/_____ being a bylaw to... be read a first time. Carried"
"*Second Reading*	Smith/Tessier: 2/2000	That Bylaw No.____/_____ being a bylaw to... be read a second time. Carried"
"*Consent for Third*	Walker/Lund: 3/2000	That Bylaw No.____/_____ be given three readings at this meeting. Carried Unanimously"

Note: If the consent resolution is not carried unanimously, the proposed bylaw is held over for third reading at the next meeting of council.

"Third Reading	Smith/Lund: 4/2000	That Bylaw No.____/_____ being a bylaw to... be read a third time and finally adopted.
		Carried"

Note: Vote on *third reading* need not be unanimous.

Amendments to a proposed bylaw may be made, by resolution, at any reading stage. Usually, this is done after second reading and before the vote on third reading.

Again, the draft bylaw is automatically deferred when the resolution to give third reading at one meeting is not carried unanimously. In this case, third reading of the bylaw is held at the next meeting.

Sometimes legislation sets out special steps that must be followed in passing a bylaw that differ from the above procedures. For example, *The Planning and Development Act, 1983* requires a notice of intention to be published when a zoning bylaw amendment is being proposed.

All council members, including the mayor or reeve, must vote on each motion. Generally, a majority vote of the council members present is sufficient to pass each reading. The only time that a majority is not sufficient is when legislation indicates otherwise.

Assent or Approval

If a bylaw requires:

- approval through a vote of the electors; or
- the approval of the Minister; or
- the approval of the Saskatchewan Municipal Board;

such approval must be obtained according to the legislation that gives the authority for the bylaw to be passed.

For example, both municipal Acts state that any bylaws passed by council to create a debt that is secured by debentures has no effect until approved by the Saskatchewan Municipal Board.

Amending or Repealing

The same power that applies to passage of bylaws also applies to amending or repealing bylaws. Amendments or changes to these documents may only be made if authorized by an amending bylaw adopted by the council.

The Amending Bylaw

A bylaw that is in effect may only be amended by another bylaw.

The purpose of an amending bylaw, therefore, is to reflect a desired change in an existing bylaw.

Amending bylaws take several forms. e.g. adding sections or words, replacing a section, or deleting a part of the old bylaw.

Rather than amend a bylaw too often, consideration should be given to drafting a new bylaw incorporating the required changes to avoid confusion.

Example:
"Bylaw No.2/2000 is amended by deleting clause 2 and by substituting the following:

2. The sum payable for a licence under this bylaw shall be $30.00 per year."

The Repealing Bylaw

A bylaw that is in effect may only be cancelled by a repealing bylaw. Although some bylaws, for example, lease agreements, are of a fixed length and expire, they should still be repealed to officially remove them from the bylaw register.

There should only be one repealing bylaw in the bylaw register at any given time. The most current repealing bylaw should include provisions to cancel any other repealing bylaw(s).

The content of the bylaw is usually in list form.

Example:
"The following bylaws are hereby repealed:

1. Bylaw No.57/63, a bylaw to eradicate rats;
2. Bylaw No.3/64, a bylaw to control grasshoppers; and
3. Bylaw No.12/77, a bylaw for the general maintenance of properties."

Retention of Bylaws

The original bylaw must be attached to and form a part of the minutes of the meeting at which the bylaw received third reading.

A certified true copy of the bylaw must be kept in the bylaw register. This copy must have the corporate seal on it and it must be certified to be a true copy by the Clerk/Administrator or the Mayor/Reeve.

Note: Where a metal seal is used (i.e. non-ink), certification of a bylaw requires the seal to be imprinted on the copy of the bylaw.

Example:
"

{SEAL} _____(copied signature)_____
Clerk/Administrator"

or
"

{SEAL} _____(copied signature)_____
Mayor/Reeve/Presiding Officer"

and

"Certified to be a true copy of Bylaw No.___/___ adopted by the council of the Rural Municipality of _____ No.__ on the _____ day of _____, _____.

{SEAL} _____(original signature)_____
Clerk/Administrator/Mayor/Reeve"

The public should be informed of the adoption of bylaws that may have some direct or indirect impact on them. Council should consider ways of publicizing new or amended bylaws (notice in newspaper, general mail-out/newsletter, etc.). Some bylaws are required to be published by statute.

Enforcement

The Urban Act and the Rural Act provide for appointing bylaw enforcement officers. Enforcement officers are charged with the day-to-day administration of the bylaws. They have no authority to waive or lessen the bylaw's requirements to fit special circumstances.

Severability

You may not adopt a part of a bylaw, it must be adopted as a whole.

Note: The courts may find part of a bylaw to be illegal, however, the balance of the bylaw may remain valid.

Quashing

An action may be taken in court to quash a bylaw or resolution, in whole or in part, for illegality. The petitioner must attack the bylaw on some ground of illegality, not just because he/she does not like it. An application to quash must be taken within two months after the final adoption of the bylaw. The grounds for quashing or declaring bylaws invalid are:

(a) **Ultra Vires** – The municipality may exercise authority only when the Provincial Government delegates it. Otherwise, the municipality is acting *beyond its powers* (ultra vires) and the proposed action of the municipality is invalid. If the municipality passes an unauthorized bylaw, the bylaw is invalid and is of no force and effect. The courts will strike down such a bylaw.

(b) **Bad Faith** – Attacks are sometimes made against bylaws based on bad faith. To establish bad faith, it must be shown that the council was directing its action against certain persons and was not generally acting in the public interest.

(c) **Discretion** – The council may provide certain discretionary powers within a bylaw. By means of these powers, the council would reserve the right to make certain future decisions by resolution.

For example, a bylaw may legitimately contain a provision authorizing council to, by resolution, appoint individuals to a committee or board established by the bylaw.

However, council cannot make future decisions by resolution that are beyond the authority granted in the bylaw or statute or that should have been passed in the bylaw. For example, a bylaw cannot contain a clause stating that council will set the penalty for an infraction against the bylaw at the time of the violation.

(d) **Discrimination** – Council cannot, in passing a bylaw, show prejudice against or favouritism toward an individual or a group of individuals.

(e) **Improper Delegation** – In a bylaw, authority cannot be delegated to any other person if council is required to pass the legislation by bylaw. For example, a council cannot delegate to an employee the right to set standards if the enabling authority says that *council* must set the standards. There are sections of legislation that allow specific delegation. For instance, a licensing bylaw passed under the Urban Act or the Rural Act gives specific power to delegate to an employee the right to issue licences.

(f) **Uncertainty** – Grounds on which a bylaw could be struck down because of uncertainty are:

- vagueness;
- lack of substance or form in the bylaw;
- lack of substance or form in the proceedings prior to its adoption or in the timing or manner of its adoption; or
- because it was procured through a violation of *The Controverted Municipal Elections Act* (e.g. bribery and threats).

Further Information

Further information may be obtained from:

Reference works such as:

Parliamentary procedure publications
Law of Municipal Corporations by I.M. Rogers

Municipal Affairs, Culture and Housing
Advisory (Management) Services
4th Floor, 1855 Victoria Avenue
Regina, Saskatchewan S4P 3V7

Phone: (306) 787-2680
Fax: (306) 787-8748

Municipal Affairs, Culture and Housing
Advisory (Management) Services
9th Floor, 122 – 3rd Avenue North
Saskatoon, Saskatchewan S7K 2H6

Phone: (306) 933-6922
Fax: (306) 933-7720

Appendix A - Bylaw Checklist

1. The bylaw should be numbered.
2. The title should be short and to the point.
3. There should be **no** preamble.
4. The words passing the bylaw should name the municipality and indicate that it is in the Province of Saskatchewan.
5. The wording should be clear and easily understood. Avoid legal jargon and words other than from the English language.
6. The bylaw must not exceed the powers of the municipality.
7. The definitions used in the bylaw must conform to the definitions set out in the enabling provisions of the Act. Definitions in a bylaw cannot expand on the definitions contained in the Act.
8. If there is a schedule attached to the bylaw, there must be a "schedule clause" in the body of the bylaw.
9. If there are forms attached to the bylaw, there must be a "form clause" in the bylaw.
10. There should be an enforcement or "penalty clause".
11. An effective date may be included, as necessary (retroactive date not allowed).
12. If the bylaw is to repeal or replace an existing bylaw, a "repealing clause" is required.
13. The bylaw must be signed by the Clerk/Administrator and by the Mayor/Reeve or Councillor who presided at the meeting when the bylaw was adopted.
14. A certified true copy of the bylaw must be produced for the bylaw register.

Appendix B - Sample Bylaw

Licensing, Regulating, Running at Large of Animals

_____(municipality)_____ of _____(name)_____

Bylaw No.____/____

A BYLAW TO LICENSE AND REGULATE THE RUNNING AT LARGE OF ANIMALS

The Council of the _____ of _____, in the Province of Saskatchewan, enacts as follows:

1. For the purpose of this bylaw the expression:

   (a) (*define the animals, which the bylaw is to apply: example: "Dog" shall mean either male or female*);

   (b) "clerk/administrator" shall mean the clerk or administrator of the municipality;

   (c) "Municipality" shall mean the _____ of _____;

   (d) "running at large" shall mean when the _(dog)_ is beyond the boundaries of the land occupied by the owner, possessor, or harbourer of the said _(dog)_, or beyond the boundaries of any lands where it may be with the permission of the owner or occupant of the said land and when it is not under control by being:

      (i) in the direct and continuous charge of a person competent to control it; or

      (ii) securely confined within an enclosure; or

      (iii) securely fastened so that it cannot roam at will.

2. (a) Every person within the municipality who owns, possesses, or harbours a (*dog over six months old*) shall obtain a licence from the Clerk/Administrator.

   (b) The licence shall be in effect from January 1 to December 31 of a calendar year, and shall be obtained on or before _(date)_, or within (*specify number of days*) days of taking possession of the _(dog)_.

(c) The licence fee shall be:

(i) for each (*dog*): $_____;

(ii) for each (*spayed/neutered dog*): $_____.

(d) The sum payable for a licence required after _____(*date*)_____ shall be _(*fraction*)_ of the charge for a full year.

3. Every person to whom a licence has been issued under this bylaw shall cause his/her __(*dog*)__ to wear a collar to which shall be attached the licence tag issued by the municipality pursuant to this bylaw.

4. A person residing in the municipality who owns, possesses, or harbours a (*dog*) , and neglects or refuses to take out a licence, therefore shall be deemed guilty of infraction of this bylaw.

5. No __(*dog*)__ shall run at large in the municipality.

6. A person who owns, possesses, or harbours a __(*dog*)__ found running at large shall be deemed guilty of an infraction of this bylaw.

7. Any person may take any __(*dog*)__ found running at large contrary to the provisions of this bylaw to the municipal pound, where it shall be kept for ***(suggested minimum retention period is five (5))*** days unless the owner, possessor, or harbourer redeems the __(*dog*)__ by paying the treasurer the sum of $____ for each __(*day*)__ impounded, and the sum of $_____ per day for the care and keep of each __(*dog*)___.

8. (a) The Clerk/Administrator/Poundkeeper may sell any (*dog*) which is not redeemed within __(*five*)__ days, provided that the purchaser thereof obtains a licence if the purchaser is a resident of the municipality.

(b) The Clerk/Administrator/Poundkeeper, or any other designated person, may destroy any __(*dog*)__ which has not been redeemed within (*five*) days.

9. (a) A person who contravenes any of the provisions of sections 3, 4 or 6 of this bylaw, shall be guilty of an offence and upon conviction, shall be liable to a maximum/fixed penalty of:

(i) Section 3 - $
(ii) Section 4 - $
(iii) Section 6 - $

(b) A violator of this bylaw, upon being served with a Notice of Violation, may, during office hours, voluntarily pay the penalty at the Municipal Office, and upon payment as so provided, that person shall not be liable to prosecution of the offence.

(c) The Notice of Violation shall be in Form "1", attached to and forming part of this bylaw.

10. Bylaw No.___ is hereby repealed.

_____
Mayor/Reeve

{SEAL}

_____
Clerk/Administrator
Section 135,
The Urban Municipality Act, 1984
Section 216,
The Rural Municipality Act, 1989

Read a third time and adopted
this ____ day of _____, _____.

NOTE: This sample bylaw has been prepared by Advisory (Management) Services staff of Saskatchewan Municipal Affairs, Culture and Housing, not by legal experts. It is for guidance purpose only and may be reworded to suit local conditions and requirements. It is always good practice to obtain the advice of your solicitor when drafting bylaws.

Form "1"
NOTICE OF VIOLATION

No:___

_____ of _____

NAME: _____
ADDRESS: _____
_____
POSTAL CODE: _____

DETAILS OF OFFENCE:

DATE:_____ TIME____ A.M. P.M. LICENCE NO._____

VIOLATION:

_____	Parking	Bylaw No._____
_____	Animal Control	Bylaw No._____
_____	Other	Bylaw No._____

DESCRIPTION OF VIOLATION:_____

LOCATION OF VIOLATION:_____

_____ _____ Owner, Possessor or Harbourer of _(dog)_

You are charged with violation of Bylaw No._____
Section(s)_____

Penalty for the above violation:_____

_____
Clerk/Administrator/
Special Constable/
Bylaw Enforcement Officer

You may make voluntary payment of the above penalty at the municipal office of the _____ of _____ during regular office hours or by mail within _____ days from the date of service of this Notice of Violation.

If you do not make a voluntary payment within the time set out above, you shall be liable to prosecution and, upon summary conviction, you shall be liable to the penalty provided under Section _____ of the said bylaw.

Note: Municipalities that do not intend to provide a pound should delete sections 7 and 8 of the attached bylaw as these sections refer to the impounding of the (*dog*) for the violation of section 5 of this bylaw.

The municipality, when issuing a notice of violation for any infraction of the bylaw and when a (*dog*) is not impounded for a violation of section 5, should be prepared to substantiate the violation in court should the person not make voluntary payment of the penalty.